

A. G. Contract No. KR94 3090TRN
ECS File: JPA 94-276
Project: Engineering Survey Account
Section: Nogales

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF NOGALES

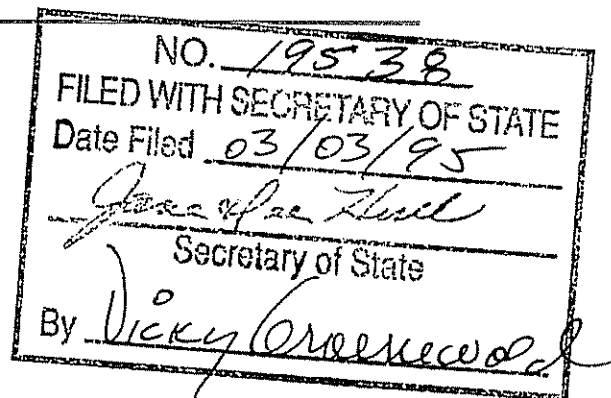
THIS AGREEMENT is entered into 3 March, 1995,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
CITY OF NOGALES, acting by and through its MAYOR and CITY
COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The City is empowered by Arizona Revised Statutes
Section 48-572 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
authorized the undersigned to execute this agreement on behalf
of the City.

3. The City requests the State, as agent for the City, to
perform certain work and prepare certain documents required by
the Federal Highway Administration to qualify certain highway,
bridge and railroad grade crossing projects for and to receive
Federal funds. Such future work, consisting of, but not
specifically limited to, the review and approval of the City
prepared environmental documents, the preparation of the
analysis requirements for documentation of environmental
categorical exclusion determinations; review of reports, design
plans, maps, and specifications; geologic materials testing and
analysis; right-of-way related activities (when specifically
authorized by, for and on behalf of the City, and at no cost to
the State) and such other related tasks essential to the
achievement of the aforementioned objectives.



4. The only interest of the State in performing the work embraced herein is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the projects are authorized to be expended, and is acting as agent for the City.

5. The estimated cost of the work shall be determined by procedures established in Local Government Engineer's Bulletin No. 91-3 dated 13 November 1991, which is attached hereto and made a part hereof, which funds the City shall transmit to and deposit with the State for the purpose of funding the cost of the work performed by the State. The minimum estimated cost of work for any project is \$5000.00.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Subsequent to the deposit of sufficient funds by the City, begin performance of the work that is required by the Federal Highway Administration to bring the projects to the construction stage.

b. Furnish all labor, materials, and equipment necessary to complete the work embraced herein when such resources are available.

c. Provide the City a periodic statement of account identifying the projects for which work has been performed, the type and amount of expenditures, and the account balance. No statement will be provided if there is no activity on the account.

2. The City will:

a. Provide the State with individual project requests to perform the necessary work on a project by project basis.

b. Deposit with the State sufficient funds for the cost of the work, all or any part of which will be used by the State to fund the cost of performing the work.

c. Solely bear the cost of the work embraced herein without State or Federal funds.

d. Insure that sufficient City funds are available for the State to accomplish the work contemplated, and deposit with the State additional funds as may be required to complete the work. Such additional deposits will be made upon request of the State when the funds in the account have been depleted, or when the account balance is so low that funds for the cost of anticipated or ongoing work are not expected to be sufficient to cover the State's expenditures.

III. MISCELLANEOUS PROVISIONS

1. The State will not be obligated to perform the work contemplated herein or incur expenditures associated with such work when labor, materials or equipment are not available to the State.

2. The State assumes no financial obligation or liability under this agreement whatsoever. The City assumes full responsibility for the adequacy and accuracy of environmental assessments and reports, the design, plans, specifications, reports, the engineering and geological testing in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, or the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

3. The cost of any design, construction or construction engineering work covered by this Agreement is to be borne by the City, but should some unforeseen condition or circumstance increase the cost of the work to be performed by the State in excess of the amount shown in the recital, the State shall not be obligated to incur any expenditure in excess of the City's deposit.

4. This agreement shall remain in force and effect for a period of five years from the effective date, and will be automatically renewed for successive periods of five years, unless sooner terminated by either the City or the State, or other competent authority.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

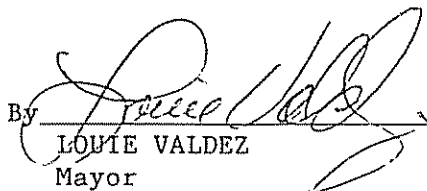
9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation	City of Nogales
Joint Project Administration	City Administrator
205 S. 17th Avenue - 616E	777 N. Grand Avenue
Phoenix, Arizona 85007	Nogales, AZ 85621

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

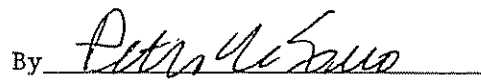
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF NOGALES

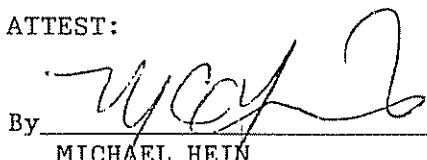
By 
LOUIE VALDEZ
Mayor

STATE OF ARIZONA

Department of Transportation

By 
PETER L. ENO
Contract Administrator

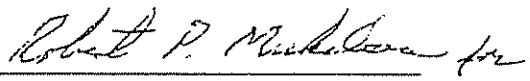
ATTEST:

By 
MICHAEL HEIN
City Clerk

RESOLUTION

BE IT RESOLVED on this 15th day of December 1994, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Nogales for the purpose of defining responsibilities for establishing an engineering survey account.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.



LARRY S. BONINE
Director

RESOLUTION NO. 95-02-15

A RESOLUTION OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF NOGALES APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION AND THE CITY OF NOGALES FOR COOPERATION IN THE PREPARATION OF DOCUMENTS FOR FEDERAL HIGHWAY ADMINISTRATION FUNDING; AND DECLARING AN EMERGENCY

RECITALS

WHEREAS, the City of Nogales (City) and the State of Arizona (State) acting by and through its Department of Transportation, desire to cooperate in the preparation of certain documents for Federal highway administration funding; and

WHEREAS, City is empowered by A.R.S. §48-572 to enter into an intergovernmental agreement by resolution; and

WHEREAS, the state is empowered by A.R.S. §§28-108 and 28-112 to enter into cooperative agreements by resolution; and

WHEREAS, the parties hereto desire to cooperate in the preparation of certain documents for Federal highway administration funding, all as is more fully set forth in the attached Intergovernmental Agreement.

NOW, THEREFORE, BE IT RESOLVED by the mayor and board of aldermen of the City of Nogales that the mayor be and hereby is authorized to execute the Intergovernmental Agreement, a copy of which is attached hereto and incorporated herein by this reference; and

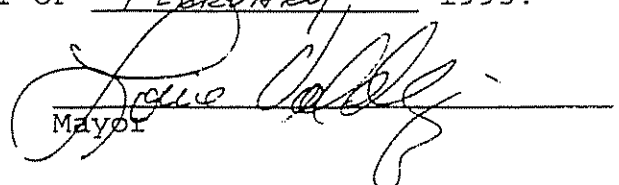
FURTHER RESOLVED that city staff is directed to do all acts necessary and in accordance with the provisions of said Intergovernmental Agreement.

WHEREAS, the preservation of the public peace, health, and safety of the City of Nogales require that this resolution shall become immediately operative,

AN EMERGENCY IS HEREBY DECLARED TO EXIST, and this resolution is hereby exempted from the referendum provisions of the Charter of the City of Nogales and shall take effect and be in full force from and after its passage and approval.

PASSED AND ADOPTED THIS 1st DAY OF February 1995.

APPROVED THIS 1st DAY OF February 1995.


Mayor

CITY OF NOGALES



CERTIFICATION

I hereby certify that the foregoing resolution is a true and correct copy of Resolution No. 95-02-15, adopted at the regular/special meeting of the City of Nogales Mayor and Council, held on the 1st. day of February, 1995.

I further certify that meeting was duly called and held and that a quorum was present.

Dated this 14th day of February, 1995.

A handwritten signature in dark ink, appearing to read "Michael C. Hein", is written over a horizontal line.

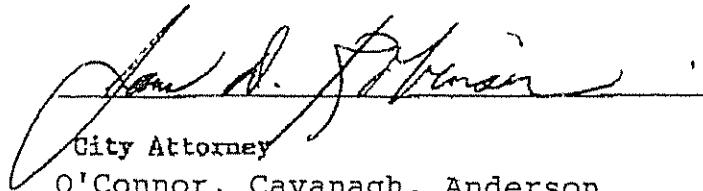
Michael C. Hein
Assistant Administrator



APPROVAL OF THE NOGALES CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF NOGALES and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 21st day of February, 1995.



City Attorney
O'Connor, Cavanagh, Anderson
Westover, Killingsworth & Beshears



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR94-3090-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 24th day of February, 1995.

GRANT WOODS
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
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